

SENATE CHAMBER,  
AUSTIN, TEXAS, Thursday, February 2, 1871. }

Senate met pursuant to adjournment; President Don Campbell in the chair.

Roll called; quorum present.

Prayer by the Chaplain.

On motion of Senator Pyle the reading of the journal was dispensed with.

### PETITIONS AND MEMORIALS.

By Senator Douglas: a memorial of citizens of Smith county, asking location of penitentiary and lunatic asylum at Tyler, and donating suitable grounds and (\$100,000) one hundred thousand dollars for the erection of buildings.

Read and referred to Select Committee on Penitentiary.

### REPORTS OF STANDING COMMITTEES.

Reports of Committee on Judiciary:

COMMITTEE ROOM,  
AUSTIN, February 1, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Judiciary, to whom was referred Senate bill No. 80, "An act for the relief of S. B. Buckley, late Assistant State Geologist," instruct me to report the same back, with the following amendments, and recommend its passage.

A. J. FOUNTAIN,  
Chairman.

Amendments to Senate bill No. 80:

Amend, by inserting in line four, after the word "authorized," the words "and required."

Amend, by striking out in lines six and seven the words "two thousand five hundred dollars," and insert the words "two thousand seven hundred and fifty-seven dollars and forty-five cents."

Report read and laid over under the rules.

COMMITTEE ROOM,  
AUSTIN, February 1, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Judiciary, to whom was referred Senate

bill No. 19, "An act to incorporate the Citizens' Savings' Bank of Jefferson," ask leave to report the same back, and recommend its reference to the Committee on State Affairs.

A. J. FOUNTAIN,  
Chairman.

On motion of Senator Fountain, the rules were suspended to consider the report.

On further motion, the report was adopted, and Senate bill No. 19 referred to Committee on State Affairs.

COMMITTEE ROOM,  
AUSTIN, February 2, 1871.

Hon. DON CAMPBELL,  
President of the Senate:

SIR: Your Committee on Judiciary, to whom was referred Senate joint resolution No. 5, "proposing amendments to sections two, three and four of article five of the Constitution of the State of Texas," ask leave to report the same back and recommend its passage.

A. J. FOUNTAIN.  
Chairman.

Report read and laid over under the rules.

Report of Committee on State Affairs:

COMMITTEE ROOM,  
AUSTIN, February 2, 1871.

Hon. DON CAMPBELL,  
President of the Senate:

SIR: Your Committee on State Affairs, to whom was referred Senate bill No. 66, entitled "An act to incorporate the Callahan Cotton Seed Oil and Manufacturing Company of Hempstead, Texas," have duly considered the same, and recommend its passage with the following amendments: in section five, line two, after the word "corporation," insert the words "for similar purposes," in same section, line two, after the words "by any," insert the word "general."

S. W. FORD,  
Chairman.

Report read and laid over under the rules.

### BILLS AND RESOLUTIONS.

By President Campbell: "An act (Senate bill No. 91) prescribing the times of holding the courts in the Seventh Judicial District."

Read first time and referred to Committee on Judiciary.

Message from the House by Chief Clerk, transmitting for concurrence House bill No. 195, "An act to amend an act prescribing the time of holding the district courts in the several judicial districts in the State, approved August 10, 1870."

Also, informing the Senate that the House had passed Senate bill No. 1, "An act to amend the twenty-second section of an act entitled 'An act prescribing the times of holding the district courts in the several judicial districts in the State.'"

By Senator Baker: (Concurrent resolution No. 2.) That whereas the Legislature has up to the present time failed officially to notify General J. J. Reynolds of the action of their respective bodies on the twenty-fourth day of January, A. D. 1871, in electing him to the Senate of the United States; therefore

*Be it resolved*, That a committee of three, one from the Senate and two from the House of Representatives, that body concurring, be appointed to inform General J. J. Reynolds of his election to the Senate of the United States, and solicit an early reply as regards his acceptance of the same.

Read, and on motion of Senator Mills, was adopted.

The President appointed on said committee Senator Baker.

By Senator Dohoney: Senate joint resolution No. 7, instructing our Senators and requesting our Representatives in Congress to urge the opening of the Indian country north of Texas to settlement.

Read first time, and on motion of Senator Dohoney, the rules were suspended, and Senate joint resolution No. 7 read second time and passed to engrossment.

Senator Dohoney moved a further suspension of the rules, which motion was lost.

By Senator Parsons: "An act (Senate bill No. 92) to authorize the Commissioner of the General Land Office to purchase one hundred copies of a book of valid land certificates, for use of surveyors, to prevent the location of fraudulent land certificates."

Read first time and referred to Committee on Judiciary.

By Senator Saylor: "An act (Senate bill No. 93) to incorporate the Leon Bridge Company."

Read first time and referred to Committee on Roads, Bridges and Ferries.

Also, "An act (Senate bill No. 94) to give effect to the several provisions of the Constitution concerning taxes."

Read first time and referred to Committee on Finance.

By Senator Hertzberg: "An act (Senate bill No. 95) to be entitled 'An act to incorporate the San Antonio Hebrew Benevolent Association;'"

Also, "An act (Senate bill No. 96) to be entitled 'An act to amend an act to incorporate the Alamo Fire Association of San Antonio, Texas.' "

Bills read first time and referred to Committee on State Affairs.

By Senator Cole: "An act (Senate bill No. 97) to be entitled 'An act authorizing Thomas C. Reedy to erect a toll bridge over the Cowleach Fork of Sabine river, in Hunt county, Texas.' "

Read first time and referred to Committee on Roads, Bridges and Ferries.

By Senator Shannon: "An act (Senate bill No. 98) to be entitled 'An act authorizing and requiring the Commissioner of the General Land Office to issue patent or patents on bounty warrant No. 831.' "

Read first time and referred to Committee on Private Land Claims.

Also, "An act (Senate bill No. 99) to incorporate the Bank of Cleburne." "

Read first time and referred to Committee on Judiciary.

Also, "An act (Senate bill No. 100) to be entitled 'An act to incorporate the Northwestern Land and Emigration Company.' "

Read first time and referred to Committee on Immigration.

Special message from the Governor by his Private Secretary:

EXECUTIVE OFFICE,  
AUSTIN, February 2, 1871.

To the Senate and House of Representatives,  
State of Texas:

GENTLEMEN: I herewith enclose a copy of a communication received from the Hon. Wm. Alexander, Attorney General, in regard to a recent decision of the United States Circuit Court for the Western District of Texas, attempting to restrain the State authorities in the matter of the issue of patents to the land embraced in what is called the Memphis and El Paso Railroad reserve.

I call attention more especially to the last paragraph of Mr. Alexander's communication, and recommend the early adoption of the measure therein suggested.

Very respectfully,

EDMUND J. DAVIS,  
Governor.

ATTORNEY GENERAL'S OFFICE,

AUSTIN, February 1, 1871.

GOVERNOR: On yesterday, in the suit in chancery in the Circuit Court of the United States at this place, of Gray, Receiver, vs. yourself as Governor, and the Commissioner of the General Land Office,

(Judges Woods and Duval presiding,) an injunction was ordered to be issued, enjoining yourself and the commissioner from issuing patents to locators, upon what is claimed to be the reserve of the Memphis, El Paso and Pacific Railroad. The opinion of the court on the demurrer to the whole bill, as well as the demurrer itself, and the causes assigned, are in print in the State Journal.

With due deference to the court, that opinion seems not to be in accordance with law. It is not perceived that a suit in equity could properly be entertained, even if the court might have jurisdiction on the score of the residence of the parties, which is not conceded, between *nominal* parties alone, none of whom have any right *sui juris* in the subject matter in controversy, and when the eleventh of the amendments to the Constitution of the United States deprives courts of the United States of the jurisdiction they originally had of suits between individual complainants and States.

Besides, as it has been long since decided in our courts, that a Governor, while in office, having the pardoning power, is not subject to ordinary criminal process, but can only be prosecuted by impeachment, it is not perceived that a Circuit Court of the United States has jurisdiction to revolutionize and put a stop to civil government, by committing a Governor and his successors in office for a breach of injunction, in case they should conscientiously refuse to obey the same, and should prefer to hold the whole of our State Constitution as accepted by the Congress of the United States, to be in force. The opinion of Judge Cooley, to the effect that a State has the constitutional power to tax only for a public purpose, and not for the benefit of a private corporation or individual, appears to rest upon a solid foundation, and to be *a fortiori* more applicable to land grants than to moneyed subsidies. If such be the law, the Legislature under our former constitution had no power to make a reserve. The present constitution does not seem to have supplied the want of power stated, nor to have curtailed the right of eminent domain, which is regarded as inherent in all States, both as to land grants and corporate franchises.

In view of the foregoing, together with other considerations, not specified for want of time and space, it is respectfully recommended to your Excellency that it be submitted to the Legislature, that prompt and adequate means be provided for the further defense of the suit mentioned, both here and in the Supreme Court of the United States. As the Attorney General cannot be required to neglect his constitutional duties and go outside of the State, it is suggested that two counsel be employed, one here, and the other at Washington, to take charge of the suit, and that a sufficient appropriation be

made to pay them for their services, and also to defray the costs adjudged on demurrer overruled against yourself and the commissioner.

I have the honor to be

Your obedient servant,

[Signed]

WILLIAM ALEXANDER,  
Attorney General.

To his Excellency,

Governor E. J. DAVIS.

Message read, and on motion of Senator Fountain, was referred to Committee on Judiciary.

Senator Pickett offered the following resolution, and moved its adoption:

*Resolved*, That the Chairman of the Committee on Printing be instructed to have printed, for the use of the Senate, five hundred copies of the Comptroller's last annual report.

Adopted.

By Senator Bell: (Senate joint resolution No. 8) "joint resolution to authorize and require the Governor to lease the State Penitentiary, together with the labor of the convicts therein.

Read first time.

On motion of Senator Mills, referred to Committee on State Affairs.

On motion of Senator Mills, Senate went into executive session.

IN SENATE

[Senator Fountain in the chair.]

On motion of Senator Bowers, the Secretary was instructed to inform his Excellency, the Governor, that the Senate, in executive session, refused to advise and consent to the nomination of J. C. Ogle, as Financial Agent of the State Penitentiary.

Senator Saylor offered the following resolution:

*Resolved*, That the Judiciary Committee be requested to enquire into the question of how many notaries public (if any) each county in this State is entitled, under the Constitution and laws as now in force, and report by bill or otherwise.

Resolution read and adopted.

Senator Pridgen, Chairman of Committee on Enrolled Bills, made the following report:

COMMITTEE ROOM,  
AUSTIN, February 2, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Enrolled Bills have examined and find correctly enrolled joint resolution No. 1, instructing our Senators

and requesting our Representatives in Congress to secure the establishment of the port of Sabine Pass a port of entry, and recommending to the honorable Congress of the United States a favorable consideration of the petition of the citizens of southeastern and northeastern Texas, in relation to the subject now in the hands of their representative, G. W. Whitmore, for presentation to the honorable Congress of the United States of America, and to-day, at eleven o'clock and twenty-five minutes, presented the same to the Governor for his approval.

B. J. PRIDGEN,  
Chairman.

Report read and received.

### UNFINISHED BUSINESS.

Senator Douglas called up the following resolution of yesterday :  
*Resolved*, That a select committee of five members be appointed to confer with a select committee of the House, to take into consideration the subject of " a division of the State," and report by bill or otherwise.

Senator Saylor moved the indefinite postponement of the resolution.

Pending discussion,

Senator Bowers moved that the Senate stand adjourned to 11 A. M., to-morrow.

Yeas and nays called for and carried by the following vote :

Yeas—Mr. President, Baker, Bell, Bowers, Cole, Evans, Ford, Fountain, Gaines, Hildebrandt, Mills, Parsons, Rawson, Saylor, Shannon—15.

Nays—Clark, Dillard, Dohoney, Douglas, Flanagan, Hertzberg, Pettit, Pickett, Pridgen, Pyle, Ruby, Tendick—12.

So the Senate adjourned.

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